

EXHIBIT 52

Indianapolis, IN

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL No. 1456

INDUSTRY AVERAGE WHOLESALE) Master File No.

PRICE LITIGATION) 01-CV-12257-PBS

-----) Subcategory Case

THIS DOCUMENT RELATES TO:) No. 06-11337

United States of America ex)

rel. Ven-A-Care of the) Hon. Patti B. Saris

Florida Keys, Inc., et al.)

v. Dey, Inc., et al., Civil)

Action No. 05-11084-PBS, and) VIDEOTAPED DEPOSITION

United States of America ex) OF THE INDIANA FAMILY

rel. Ven-A-Care of the) AND SOCIAL SERVICES

Florida Keys, Inc., et al.) ADMINISTRATION by

v. Boehringer Ingelheim) CARL MARK

Corp., et al., Civil Action) SHIRLEY, R.Ph.

No. 07-10248-PBS) VOLUME II

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DECEMBER 3, 2008

INDIANAPOLIS, INDIANA

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<p>1 Q. Okay. I'd ask you to turn to page 14.</p> <p>2 And I would ask you if you would agree with me --</p> <p>3 well, I would ask you if you would explain to me</p> <p>4 what you think that the information represented</p> <p>5 on page 14 means, what it appears to be.</p> <p>6 A. This is the process Myers & Stauffer</p> <p>7 used in going about establishing state MAC rates.</p> <p>8 Q. Okay. And you would agree it appears</p> <p>9 to explain the process that was effective for</p> <p>10 several time periods on this page and continuing</p> <p>11 through to page 16?</p> <p>12 A. Yes.</p> <p>13 Q. Can I ask you to just quickly review</p> <p>14 any one of these, the section for process</p> <p>15 effective June 2002 through March 2005 on page</p> <p>16 14.</p> <p>17 (Witness complied with request.)</p> <p>18 Q. Is it your understanding that Myers &</p> <p>19 Stauffer was recommending -- or was stating that</p> <p>20 the multiplier to average actual acquisition</p> <p>21 costs in the state MAC program would be 1.2?</p> <p>22 MS. ST. PETER-GRIFFITH: Object to the</p>	<p>1 multiplier. It's as stated. And I am not</p> <p>2 familiar with the derivation of the 1.2 figure.</p> <p>3 Q. Okay. This document, I'm just looking</p> <p>4 at page 14, for June 2002 through March 2005</p> <p>5 states that "An adjustment multiplier was applied</p> <p>6 to the base rate to ensure that the applicable</p> <p>7 state MAC rate is sufficient to allow reasonable</p> <p>8 access by providers to the drugs at or below the</p> <p>9 established state MAC rate. The multiplier was</p> <p>10 1.2, meaning that the state MAC rate is equal to</p> <p>11 120 percent of the base rate." And that section</p> <p>12 also describes base rate as being the average</p> <p>13 actual acquisition costs.</p> <p>14 So do you understand that the</p> <p>15 multiplier of 1.2 was chosen to ensure that</p> <p>16 applicable state MAC rate is sufficient to allow</p> <p>17 reasonable access by providers to drugs at or</p> <p>18 below established state MAC rates?</p> <p>19 A. That appears to be what the fourth</p> <p>20 bullet point is stating.</p> <p>21 Q. Now, it's my understanding that the</p> <p>22 base rate discussed is the average actual</p>
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<p>1 form.</p> <p>2 A. States the multiplier was 1.2.</p> <p>3 Q. Was for that period?</p> <p>4 A. Yes.</p> <p>5 Q. And if you continue looking at the</p> <p>6 other periods discussed, which are April 2005 to</p> <p>7 July 2005, and continuing on to the next two</p> <p>8 pages after August 2005, September 2005 to March</p> <p>9 2006 and April 2006 and thereafter, that it</p> <p>10 appears that the same 1.2 multiplier was used?</p> <p>11 A. Yes, that's correct.</p> <p>12 Q. Is that consistent with your</p> <p>13 recollection of how the MAC program multiplier</p> <p>14 was set?</p> <p>15 A. That's the history of the MAC</p> <p>16 multiplier, to my knowledge.</p> <p>17 Q. What is the -- do you know what the MAC</p> <p>18 multiplier is right now?</p> <p>19 A. I believe it's 1.2.</p> <p>20 Q. Do you understand why the multiplier</p> <p>21 was set at 1.2 rather than 1.0?</p> <p>22 A. I understand the purpose of the</p>	<p>1 acquisition costs; is that correct?</p> <p>2 A. That's what the document states.</p> <p>3 Q. Okay. So when Indiana chose to</p> <p>4 reimburse drugs at average -- chose to set its</p> <p>5 MAC rate program -- its MAC program at a</p> <p>6 multiplier of 1.2 of average actual acquisition</p> <p>7 costs, it was seeking to make sure that there was</p> <p>8 reasonable access MAC for providers to</p> <p>9 pharmaceuticals -- pardon me, strike that.</p> <p>10 So it's your understanding that the MAC</p> <p>11 rate is set above average actual acquisition</p> <p>12 costs in Indiana; is that correct?</p> <p>13 A. Since the state MAC rate is 1.2 times</p> <p>14 the base rate, that would be the case, yes.</p> <p>15 Q. Okay. The state MAC rates exceed</p> <p>16 average actual acquisition costs by 20 percent;</p> <p>17 is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that was Indiana's choice to make?</p> <p>20 They were not -- Indiana was not forced to choose</p> <p>21 to pay a 20 percent premium to average actual</p> <p>22 acquisition costs; is that correct?</p>

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